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CANCELLED

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by Shri Sanjay Pandey
Advocate

समक्ष माननीय उच्च न्यायालय जबलपुर म0 प्र0

क्रिमनल अपील क्रमांक :- 1137 /2000

अमृतलाल, वल्द मंहगूराम सा[illegible]ivision Bench (.iminal)

आयु 22 वर्ष

निवासी- ग्राम बिरकूटोला

हाल - काडे थाना - मोहल्ला

जिला - राजनांदगांव ----------अपीलार्थी

विरूद्ध

मध्य प्रदेश शासन

द्वारा- थाना मोहल्ला

जिला- राजनांदगाव म0 प्र0----------प्रत्यर्थी

अपील दंड प्रक्रिया संहिताकी धारा 374(2) के अंतर्गत

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... Cr. R. No. 1137/00 ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -
Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

13.9.2006

Miss Nirupama Bajpai, Advocate for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. D.K. Gwalre, Dy. Govt. Advocate for the State/respondent.

Oral judgment dictated on *Dais.*

Per L.C. Bhadoo, J: -

This appeal is directed against the judgment of conviction & order of sentence dated 8th March, 1999 passed by learned 2nd Additional Sessions Judge, Rajnandgaon in S.T.No.159/98, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C. for committing murder of his wife namely Durpati Bai, sentenced him to undergo imprisonment for life and to pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for 1 year.

The prosecution case, in brief, is that on 30th May, 1998 accused/appellant Amritlal along with his wife Durpati Bai went to the forest for collecting wood. Accused/appellant returned to his house and informed his father namely Mahanguram (PW-1) that Durpati Bai has died on account of fall, therefore, on the same day at 3.00 p.m. in the evening Mahanguram, gave merg intimation (Ex.P-1) in the Police Station Mohla to the effect that today his son Amritlal along with his wife Durpati Bai went to forest for collecting wood, his son Amritlal informed him that while cutting the tree his wife raised a scream 'oh mother' and fell down on the ground. On hearing scream of his

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wife, he went near her and saw that blood was coming out of her mouth and without speaking she died. Receiving this information (Ex.P-1), the Investigating Officer left for the place of occurrence and prepared the Panchanama (Ex.P-2) of the dead body of deceased after giving notice (Ex.P-3) to the Panchas. During investigation, accused/appellant while in police custody gave memorandum (Ex.P-4) regarding the place where he kept the rope, weapon of offence and in pursuance of that three pieces of rope were taken into possession under Ex.P-6. Clothes of accused and axe were taken into possession under Ex.P-5. Blood stained soil, plain soil and broken pieces of bangles were taken into possession under Ex.P-10. Clothes of deceased were taken into possession under Ex.P-17. Dead body of deceased was sent for postmortem examination to the Primary Health Centre, Mohla under Ex.P-21A, where the doctors conducted the postmortem on the body of deceased and prepared the postmortem report Ex.P-21. They opined that cause of death is asphyxia due to strangulation and death is homicidal in nature. The doctors while conducting the postmortem noticed following injuries:-

i. Bleeding from nostril and mouth, tongue was bitten by teeth & bluish in colour. Face swelled, eyelid of both eye ecchymosed blackish.
ii. Multiple abrasion present on left knee joint in the size of 3" x 3".
iii. Multiple abrasion present below right knee joint in the size of ½cm x 1cm, black in colour.
iv. Multiple abrasion in left side of back in the size of 5"x3", black in colour.

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v. A black mark in the right cheek just side of right eye in the size of 2"x3".

vi. A black mark present in middle of vault in the size of 5"x3". On dissection of this mark clotted effused blood was present.

vii. A black mark was present in front of neck in the size of $4\frac{1}{2}$"x $\frac{1}{2}$" and on dissection it is hard and blood effused. This mark is in completely in circle the neck at the level of both shoulders.

viii. Multiple abrasion in both elbow joints posterior in size of 2" x 2". Fowl smelling.

ix. A black mark was present on the face in the size of 3" x 1".

The doctors were of the opinion that Injury No.3 was caused by hard and blunt object. Marks on the neck may be due to any rope like article. All injuries were ante mortem in nature. Recovered articles were sent for chemical examination to Forensic Science Laboratory, Raipur, from where report (Ex.P-19) was received. As per report, blood was found on the rope, half-pant & t-shirt of the accused. Thereafter, F.I.R. (Ex.P-25) was registered on 2.6.1998 for commission of offence under Section 302 of I.P.C.

After completion of usual investigation, charge sheet was filed against the accused/appellant in the Court of learned Judicial Magistrate First Class, Ambagarh Chowki, who in turn committed the case to learned Sessions Judge, Rajnandgaon, from where learned 2nd Additional Sessions Judge, Rajnandgaon received the case on transfer for trial.

The prosecution in order to establish the charge against the accused/appellant examined 21 witnesses. On the other hand, statement of accused/appellant was recorded under Section 313 of Cr.P.C. in which he

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denied the material appearing in the prosecution evidence against him and stated that he is innocent and has been falsely implicated in the crime. He has further stated that he was cutting the branches of tree, whereas, his wife was collecting those branches and all of sudden she fell down on the ground and died on her own.

Learned 2nd Additional Sessions Judge, after hearing the arguments of respective counsel, convicted and sentenced the accused/appellant herein as mentioned in para 1 of this judgment.

We have heard Miss Bajpai Adv. for the appellant and Mr. Deo, Addl. Public Prosecutor with Mr. Gwalre, Dy. G.A. for the State.

As far as the death of Durpati Bai being homicidal in nature is concerned, learned counsel for the accused/appellant argued that when the accused was busy in cutting the branches of tree, deceased all of a sudden fell down, the accused immediately rushed to the village to inform the villagers and the prosecution has not been able to establish that the death of deceased was homicidal in nature.

In order to appreciate the argument advanced by learned counsel for the accused/appellant, we have perused the evidence available on record. Even though the accused/appellant in his statement recorded under Section 313 of Cr.P.C. has stated that while he was busy in cutting the branches of tree and his wife was busy in collecting those branches, she fell down all of sudden and died on her own, but as per merg intimation (Ex.P-1) given by the PW-1 Mehanguram, father of accused, the accused informed him that Durpati Bai died on account of fall while she was busy in cutting the tree. Whereas, Dr. J.R. Mandavi (PW-20), who was one of the members of the medical board

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	and conducted postmortem on the body of deceased, has confirmed the injuries found on the body of deceased, as mentioned earlier, in Paragraph No.6 of his evidence he has stated that it was possible to cause these injuries by blunt and hard object. The injuries, which were found on the neck of the deceased, could be caused by rope like articles and all the injuries were ante mortem in nature. In Para-8 he has further stated that cause of death was strangulation, as a result of asphyxia and was homicidal in nature. In the cross-examination this witness has stated that body was brought on 30.5.1998 at about 12.00 noon and was kept in mortuary and postmortem was conducted on 31.5.1998 because on 30.5.1998 the doctor was not available. Abrasion injuries found on the body of deceased could be caused by hard and blunt object, but how these injuries could be caused, he was not in a position to given his opinion. As far as the strangulation and asphyxia is concerned, the doctor has stated in the examination-in-chief that this mark was completely in-circle the neck, same could be caused by rope and there is no cross-examination on this point. Therefore, the doctor's evidence cannot be discarded, as there was no cross-examination on this point and there was no suggestion on behalf of the accused that how the injury found around the neck of deceased was as a result of fall, which resulted into strangulation. Moreover, as per postmortem report injury of in-circle round the neck in the size of $4\frac{1}{2}$" x $\frac{1}{2}$" was found and on dissection the same was found hard & blood effused and there was a mark of complete in-circle round the neck at the level of both the shoulders. Apart from that so many multiple abrasions were found on the knees of both the legs, elbow joints, on the left side of the back and there was one injury mark on the cheek on the right side. All these	

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injuries suggest that same were the result of struggle by the deceased and not due to fall on the ground. Therefore, finding of the trial court that the death of deceased was homicidal in nature based on the medical opinion of the doctors, is correct and we do not find any ground to interfere with the same. As such, it is established that the death of deceased Durpati Bai was homicidal in nature.

As far as involvement of accused/appellant in commission of crime under Section 302 of IPC is concerned, there is no direct evidence, whole case rests on the circumstantial evidence and in order to convict an accused on the basis of circumstantial evidence, as has been held by Hon'ble Apex Court in the matter of **Dhananjoy Chatterjee Vs. State of W.B.** reported in **(1994) 2 SCC 220**, the prosecution has to establish the case as per following principle:-

> "In a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof."

In the present case, the prosecution has tried to establish the crime against the accused/appellant on the following circumstances:

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i. The accused and the deceased, when she was alive, were last seen together when they were going to the forest for collecting the wood in the morning of the date of incident.

ii. A false explanation given by the accused that the deceased died on account of fall on the ground.

As far as first circumstance is concerned, PW-8 Yashoda Bai & PW-10 Ramdayal, have categorically stated that when they were returning from the forest after collecting the wood, the accused along with his wife Durpati Bai (since deceased) met them on the way, when PW-10 Ramdayal enquired from them as to where they are going, they replied that they are going to forest to collect the wood. Thereafter, they returned to their house. This fact has not been disputed rather it is admitted, as the accused in reply to Question No.19, in his statement under Section 313 Cr.P.C., has stated that it is correct that he along with his wife Durpati Bai met Yashoda Bai & Ramdayal on the way. Even the accused in reply to Question No.56 has categorically admitted that he was cutting the branches of tree, which was lying on the ground, and his wife was busy in collecting those branches of tree and all of a sudden she fell down and died. Therefore, it is admitted position that till the death of Durpati Bai, accused was with the deceased. He has not said that any third person was there and that person attacked the deceased.

As far as second circumstance is concerned, till the death of deceased Durpati Bai, accused and deceased were together and accused informed his father Mehanguram (PW-1) based on which his father gave merg intimation (Ex.P-1) and as per the explanation given by the accused in his statement under Section 313 Cr.P.C. his wife died on account of fall on the ground,

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whereas, it is established, as per earlier discussion, that the deceased died on account of asphyxia due to strangulation, as per medical report. Therefore, the explanation of the accused/appellant was found to be false and this conduct of the accused indicates towards his involvement in commission of crime. The accused was the best person to explain as to how the deceased sustained multiple abrasions all over the body and the mark of strangulation around the neck with the help of rope. Even the rope, which was used for strangulation, has been recovered under Ex.P-6 at the instance of accused/appellant, as per memorandum E.xP-4. The doctors, after examination of the rope, opined that in-circle injury round the neck could be caused by rope in question. As such, this circumstance also goes against the accused/appellant, as he has given false explanation regarding the cause of death of deceased. Accordingly the chain of circumstances regarding involvement of accused/appellant in crime in question is complete because it is admitted fact that till the death of deceased, the accused was with the deceased and the deceased died on account of homicidal injuries on her neck i.e. strangulation for which the accused has given false explanation and for the reasons given in the foregoing paragraphs it is established that the accused was the author of crime in question and there is no possibility of coming any third person in between.

In the result, we do not find any illegality or irregularity in the finding of the trial court, the appeal is devoid of merit, same is liable to be dismissed and accordingly, it is hereby dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge